IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 122 of 2005

GOKULRAM
V/S
TEJ KUNWAR @ ANITA & ORS

Mr. RANJEET JOSHI, for the appellant / petitioner

Mr. RK THANVI, for the Caveator Respondent

Date of Order : 27.4.2005

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for appellant, and the learned counsel for caveator, at considerable length. Learned counsel for the appellant read to me the statements of PW-1 Tej Kunwar, PW-3 Rupendrapal, PW-4 Deepak Kumar, the brother of the plaintiff, and also the Judgments of two courts below.

Assailing the impugned Judgments, the learned counsel for the appellant firstly assailed the finding of learned court below on issue no.1 regarding inconsistent user of the premises, and submitted, that the ground floor was let out for commercial purposes, as is clear from rent note Ex.1, while the learned courts below have considered the premises to have been let out for residential purposes, and treating them to be used for commercial purposes, has found the appellant guilty. I have read the rent note, and am satisfied, that the findings of court below on issue no.1 are not sustainable.

Then the learned counsel for the appellant has assailed the finding of courts below on issue nos.3,5,6 and 8, which relate to reasonable & bonafide necessity, and comparative hardship. Bonafide necessity pleaded is, that the plaintiff is unmarried, and physically handicapped by both the legs, living with her brother, and wants to live independently, and carry on hotel business. The case of the plaintiff is, that living with brother does not suit her as she does

not get timely food, and required restricted food, likewise she needs whole time servant, which too is not feasible with the brother, and therefore, she wants to live independently, keeping with her, a servant. It is case of plaintiff, that from the present financial income, she is not able to meet her day to day requirement of medicines, tricycle, periodical check-up, and she would further need accommodation, and amount to defray the salary of the servant to be kept.

From the reading of the statement of plaintiff PW-1, so also her brother PW-4, it is clear, that witnesses have deposed to this requirement of plaintiff, and there is no material cross-examination in this regard, whether to show, that need is not reasonable, or not bonafide, or is obliquely motivated, or is mere wish or desire to quit the tenant. Much was said, that the learned Lower Appellate Court has proceeded on conjectures and surmises, while recording the finding about the financial capacity of the plaintiff, and her potential to obtain loan etc. to establish the hotel business, for which there is no evidence. True it is, that in this regard there is no evidence on the side of plaintiff, but then, to dislodge the pleaded requirement, the appellant has not put anything to the plaintiff, or her witnesses, in cross-examination in that regard.

To say the least, the pure finding of fact recorded by the courts below, on the question of reasonable and bonafide necessity of the plaintiff, so also on the question of comparative hardship, are not satisfactorily shown to be vitiated on the grounds available under Sec. 100 CPC. To be more specific, learned counsel for the appellant desired me to re-appreciate the evidence of three witnesses, and to come to conclusion, that finding of courts below on the question of reasonable and bonafide necessity, and comparative hardship are incorrect. I am afraid, this is not permissible within the scope of appeal under Sec. 100 CPC.

Since the learned courts below have decreed the suit for eviction on more than one grounds, i.e. inconsistent user, and reasonable and bonafide requirement of the plaintiff, even though I have not agreed with the findings of the learned courts below on issue no. 1, still since the decree is required to be sustained on the other ground of reasonable and bonafide requirement of the plaintiff, which has been upheld above, the appeal, cannot be said to be involving any substantial question of law. Thus the appeal has no force, and is, dismissed summarily.

I may simply note a fact, as informed by the learned counsel for the caveator, that after passing of the impugned decree, the decree for eviction has already been executed. Be that as it may. This is being noticed as a fact, not in any manner influencing me in my arriving at the conclusions as above.

(N P GUPTA),J.

/Srawat/